



PATENT APPLICATION

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JEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Timothy J. Cooney et al. **EXAMINER:** Charles, D.
SERIAL NO.: 09/832,603 **GROUP ART UNIT:** 3628
FILED: April 11, 2001 **ATTY DKT NO.:** D5045
TITLE: OUGHTA COST PURCHASING PROCESS

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 C.F.R. §1.8(a)

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October 24, 2006
Date

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Commissioner for Patents
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REPLY BRIEF UNDER 37 C.F.R. §41.41

Sir:

This Reply Brief is filed in response to the Examiner's Answer mailed October 4, 2006. The numbering and titles of Sections in this Reply Brief reflects the numbering of the Appeal Brief as set forth in 37 C.F.R. §41.37.

I. REAL PARTY IN INTEREST

No further comment.

II. RELATED APPEALS AND INTERFERENCES

No further comment.

III. STATUS OF CLAIMS

No further comment.

IV. STATUS OF AMENDMENTS

No further comment.

V. SUMMARY OF CLAIMED SUBJECT MATTER

No further comment.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

No further comment.

VII. ARGUMENT

A. Claims 1, 8, and 13-20 stand rejected under 35 U.S.C. §103(a) given Burns in view of Horie.

In the Examiner's Answer on p. 17, the Examiner argues that the word "potential" means possibly and states that Newman, Burns, Horie, and Dudle teach "various cost structures that incorporate lowest possible cost." The Examiner does not provide support for this position. The Examiner states in the Examiner's Answer on pp. 17-18:

Burns teaches obtaining the best value for the dollar and that is equal to the lowest cost (Abstract, col. 24, line 10 - col. 25, line 15).

Burns does not appear to make or imply such a statement in the paragraphs cited. Further, one of skill in the art would not conclude that "the best value for the dollar" is equal to "the lowest cost." One of skill in the art would recognize that two concepts are not the same. For example, one person may buy a brand new 2006 Corvette in mint condition with 5 miles on the odometer for \$40,000, when its established market value is \$60,000. Another person may buy another 2006 Corvette for \$30,000 in poor condition, with significant body and frame damage, 25,000 miles on the odometer, and estimates of \$20,000 to fix the damage. One of skill in the art would reasonably conclude that the best value for the dollar is the \$40,000 mint car, not the \$30,000 damaged car, thus the best value for the dollar is not the same as the lowest cost. Further, "value" is often a subjective term, while "lowest cost" is objective.

From the Examiner's Answer at the top of p. 18:

Burns' example in Create Direct Cost is the most extensive section on CCMAS. $\text{Lowest_Subcost1} + \text{Lowest_subcost2} = \text{Lowest_total_cost}$.

The Examiner's comments are unclear and do not support the claim language. If an example is the "most extensive section on CCMAS," how does that relate to lowest cost potential or any other element of the claims? No reason is set forth for placing the phrase " $\text{Lowest_Subcost1} + \text{Lowest_subcost2} = \text{Lowest_total_cost}$ " at this point in the

Examiner's Answer. What is the equation's relevancy, given this equation does not appear to be found in Burns, and the Examiner provides no cite in Burns for this equation. In a search on the text of the Burns patent as it appears on the USPTO website, the word "lowest" was not found.

Further, this section of Burns teaches **away** from lowest possible cost.

a. Comparative Process. This section (FIG. 3, comprising FIGS. 3a & 3b) requires the least amount of user input and time to execute. It uses historical information or information developed from the other process as a comparison to **estimate** a facility's cost. This process starts with costs at the facility level of the CCMAS Hierarchy and uses factors to break these costs down to the CCMAS-UNIFORMAT System, CCMAS-UNIFORMAT Subsystem, CCMAS Assembly, and CSI Division, then distributes the costs to the element level. *The **primary source** of data used by this module is **historical costs** of actual executed projects.* This historical cost is used to develop **regression equations** and **cost adjustment factors**. Additionally, the generic models and QTO processes described in the paragraphs below are used to develop **additional cost adjustment factors** for this process that are not readily available from historical cost information. Following is a description of how the knowledge bases are created for this process and how they are used. [Column 24, line 63 through column 25, line 14, emphasis added]

Moreover, even if this section of Burns cited by the Examiner did actually teach that determining direct costs was the same as finding a lowest cost potential for this small part of the project, citing only this section does not take into account the numerous other statements of Burns that teach **away** from lowest cost potential, such as escalation factors, differences in cost, regression analysis, averaging, normalizing, and taking unknown conditions into account, as set forth in detail on pages 25-28 of the Applicant's Appeal Brief. Many such examples can be found further down in the "Create Direct Cost" section that the Examiner relies on as teaching lowest cost potential. For the sake of simplicity, only one example will be cited here.

A **regression analysis** is performed for the three major supporting facility categories by family category code using the following nonlinear equation: ... Additionally, **averages** for each of the three major supporting facility categories are taken to determine the percentage split between them [Column 27, lines 19-28, emphasis added].

Therefore, one of skill in the art would conclude that Burns teaches trying to determine or calculate **actual** costs, not **lowest** cost potential. The title of Burns patent, "TOTALLY INTEGRATED CONSTRUCTION COST ESTIMATING, ANALYSIS, AND REPORTING SYSTEM," supports this argument. Burns is trying to estimate what he will pay, not

determine what the lowest cost potential for his project might be. One of skill in the art would not conclude that the section of Burns cited by the Examiner, nor the Burns reference as a whole, teaches **lowest** cost potential.

Neither Burns, Horie, nor Dudle separately or in combination teach or suggest lowest cost potential as set forth in the claims.

B. Claims 2-7 and 9-12 stand rejected under 35 U.S.C. §103(a) in view of Burns, Horie, and Dudle.

See Section VII.A above.

C. The Applicant's attorney apologizes that a mislabeling of sections occurred resulting in no Section C appearing under this heading in the Applicant's Appeal Brief.

D. Summary of Argument

No further comment.

VIII. CLAIMS APPENDIX

No further comment.

IX. EVIDENCE APPENDIX

No further comment.

X. RELATED PROCEEDINGS APPENDIX

No further comment.

Respectfully submitted,

Date: October 24, 2006

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